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No. 81-61

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, et al.,
Petitioners,

v.

GRACIE ROBINSON AND JUANITA HAGER, etc.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
ARGUMENT	
There is no merit to respondents' argument that the substantive terms of a collective bargaining agreement, embodied in an employee benefit trust, are subject to review by federal courts for reasonableness under the "sole and exclusive benefit" provision in Section 302(c)(5) of the Taft-Hartley Act	1
CONCLUSION	11

TABLE OF AUTHORITIES

CASES:	Page
Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971)	9, 10
Alvares v. Erickson, 514 F.2d 156 (9th Cir.), *cert. denied*, 423 U.S. 874 (1975)	5
Assalone v. Carey, 473 F.2d 199 (D.C. Cir. 1972)	7
Bowers v. Ulpiano Casal, Inc., 393 F.2d 421 (1st Cir. 1968)	5
Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768 (1952)	2
Carbon Fuel Co. v. UMWA, 444 U.S. 212 (1979)	9
Corning Glass Works v. Brennan, 417 U.S. 188 (1974)	3, 4
Cuff v. Gleason, 515 F.2d 127 (2d Cir. 1975)	7
Danti v. Lewis, 312 F.2d 345 (D.C. Cir. 1962)	7
Franks v. Bowman Transportation Co., 424 U.S. 747 (1976).	3, 4
Gaydosh v. Lewis, 410 F.2d 262 (D.C. Cir. 1969)	6
Knauss v. Gorman, 583 F.2d 82 (3d Cir. 1978)	5
Kosty v. Lewis, 319 F.2d 744 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 964 (1964)	6
Lee v. Nesbitt, 453 F.2d 1309 (9th Cir. 1972)	7
Lewis v. Hogwood, 300 F.2d 697 (D.C. Cir. 1962)	7
Lugo v. Employees Retirement Fund of the Illumination Products Industry, 529 F.2d 251 (2d Cir.), *cert. denied*, 429 U.S. 826 (1976)	6
N.L.R.B. v. Amax Coal Co., ___ U.S. ___, 101 S. Ct. 2789 (1981)	7, 8, 9, 10

N.L.R.B. v. Insurance Agents International Union, 361 U.S. 477 (1960) 9
N.L.R.B. v. Magnavox Co., 415 U.S. 322 (1974) 2, 3
Norton v. I.A.M. Nat. Pension Fund, 553 F.2d 1352 (D.C. Cir. 1977) 6
Pacemaker Yacht Co. v. N.L.R.B., 108 L.R.R.M. 2817 (3d Cir. 1981) 4
Pete v. UMWA Welfare and Retirement Fund of 1950, 517 F.2d 1275 (D.C. Cir. 1975) *(en banc)* 6
Radio Officers' Union v. N.L.R.B., 347 U.S. 17 (1954) 2, 3
Roark v. Lewis, 401 F.2d 425 (D.C. Cir. 1968) 6
Robinson v. UMWA Health and Retirement Funds, 640 F.2d 416 (D.C. Cir. 1981) 4
Rueda v. Seafarers International Union, 576 F.2d 939 (1st Cir. 1978) 7
Ruth v. Lewis, 166 F. Supp. 346 (D.D.C. 1958) 7
Sheet Metal Workers International Association, 234 N.L.R.B. 1238 (1978), *petition for review pending sub nom. Central Florida Contractors Association v. N.L.R.B.*, No. 79-2396 (5th Cir. 1979) 8
Steele v. Louisville and Nashville R.R. Co., 323 U.S. 192 (1944) 2
UMWA v. Pennington, 381 U.S. 657 (1965) 3

STATUTES:

Declaratory Judgment Act, 28 U.S.C. § 2201 (1976) 7
Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (1976)
Section 404, 29 U.S.C. § 1104 (1976) 8
Section 406, 29 U.S.C. § 1106 (1976) 8

Labor Management Relations Act, 1947
Section 302(c)(5), 29 U.S.C. § 186(c)(5) (1976) 5, 8, 9
Section 302(e), 29 U.S.C. § 186(e) (1976) 6

National Labor Relations Act
Section 7, 29 U.S.C. § 157 (1976) 3
Section 8(a)(3), 29 U.S.C. § 158(a)(3) (1976) 3
Section 8(a)(5), 29 U.S.C. § 158(a)(5) (1976) 7
Section 8(b)(3), 29 U.S.C. § 158(b)(3) (1976) 7
Section 8(d), 29 U.S.C. § 158(d) (1976) 7, 8

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ARGUMENT

There is no merit to respondents' argument that the substantive terms of a collective bargaining agreement, embodied in an employee benefit trust, are subject to review by federal courts for reasonableness under the "sole and exclusive benefit" provision in Section 302(c)(5) of the Taft-Hartley Act.

Respondents argue that the court below properly set aside an employee benefit trust eligibility rule contained in a collective bargaining agreement because the provisions of benefit trusts are subject to review for rea-

sonableness. In so arguing, respondents rely on *Steele v. Louisville and Nashville R.R. Co.*, 323 U.S. 192 (1944), *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768 (1952), *Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17 (1954), and *N.L.R.B. v. Magnavox Co.*, 415 U.S. 322 (1974). Brief for Respondents ("Res. Br.") at 31-34. As petitioners have demonstrated, however, these cases, and others cited by petitioners, permit judicial review of collective bargaining agreements only where the agreement is illegal, or was obtained illegally. Brief for Petitioners ("Pet. Br.") at 15-16, 22 & n.6.

In *Steele*, the union and the employer entered into a collective bargaining agreement that effectively removed black employees from their jobs and made the jobs available only to whites. This Court struck down the agreement because the union had violated the duty imposed by the Railway Labor Act on statutory collective bargaining representatives to represent all members of the bargaining unit fairly and impartially. *Steele v. Louisville and Nashville R.R. Co.*, *supra*, 323 U.S. at 202-04. Similarly, in *Howard*, this Court struck down a racially discriminatory collective bargaining agreement, noting that "[b]argaining agents who enjoy the advantages of the Railway Labor Act's provisions must execute their trust without lawless invasions of the rights of other workers." *Brotherhood of Railroad Trainmen v. Howard*, *supra*, 343 U.S. at 774.

Radio Officers' Union involved discrimination against some members of the collective bargaining unit, not on the basis of race, but rather on the basis of union membership. In that case, this Court examined three separate collective bargaining agreements in which the unions obtained undertakings from the employers that allowed

either the union or the employer to treat non-union employees less favorably than union employees. None of the agreements satisfied the detailed procedural requirements then imposed by Section 8(a)(3) of the National Labor Relations Act ("NLRA") on union security clauses. *Radio Officers' Union v. N.L.R.B.*, *supra*, 347 U.S. at 25, 29-30, 35. This Court concluded, therefore, that these undertakings violated the right of employees guaranteed by Section 7 of the NLRA to refrain from engaging in union activity. *Id.* at 42. Accordingly, this Court held that the discriminatory conduct directed at non-union members constituted unfair labor practices under Section 8 of the NLRA. *Id.* at 47-48.

In *Magnavox*, the issue was the right of employees under Section 7 of the NLRA "to form, join, or assist labor organizations." 29 U.S.C. § 157 (1976). The union and the employer had agreed to a rule prohibiting the in-plant distribution of union literature during non-working hours. This Court held that the rule was in conflict with the employees' organizational rights under Section 7, and, therefore, that the collective bargaining agent lacked the power to agree to it. *N.L.R.B. v. Magnavox Co.*, *supra*, 415 U.S. at 325-26.[1]

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[1] Respondents also rely on three cases in which the legality of the collective bargaining agreement was not directly in issue and which, therefore, have no real bearing on this case. *UMWA v. Pennington*, 381 U.S. 657 (1965); *Corning Glass Works v. Brennan*, 417 U.S. 188 (1974); and, *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976). *Pennington* involved a claim that the union had conspired with a multi-employer bargaining unit to restrain competition by negotiating a set wage scale with other employers not part of that unit. This Court held that such a conspiracy violated the antitrust laws, and that the union could, therefore, be held liable for its action. *UMWA v. Pennington*, *supra*, 381 U.S. at 666. In a similar fashion, this Court recognized in *Corning Glass Works* that a facially valid

Contrary to respondents' assertion, however, none of these cases, nor any other decision of this Court, has authorized lower courts to judge the wisdom of the economic bargain struck by the parties. Yet that is precisely what the court below undertook to do when it decided that the exclusion of respondents' class from life-time health benefits was unreasonable. *Robinson v. UMWA Health and Retirement Funds*, 640 F.2d 416, 422-23 (D.C. Cir. 1981) (P.A. 12a-13a).[2] In so deciding, the court simply lost sight of the settled principle that "[a]bsent a contractual provision in irreconcilable conflict with the federal labor policy, neither courts nor the Board may modify or nullify substantive contractual provisions." *Pacemaker Yacht Co. v. N.L.R.B.*, 108 L.R.R.M. 2817 (3d Cir. 1981).

Respondents attempt to show such an "irreconcilable conflict" by contending that the exclusion of respondents'

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collectively-bargained pay scale which perpetuated a discriminatory pay differential for male and female workers did not insulate the employer from prosecution under the Equal Pay Act. *Corning Glass Works v. Brennan*, *supra*, 417 U.S. at 208-09. And, in *Franks*, a valid collectively-bargained seniority system was no impediment to an award of seniority as part of the remedy for racially discriminatory hiring practices in violation of Title VII of the Civil Rights Act of 1964. *Franks v. Bowman Transportation Co.*, *supra*, 424 U.S. at 747.

[2] Respondents assert that petitioners have failed to argue that the collectively-bargained eligibility provision excluding respondents' class from life-time health coverage is reasonable, and, therefore, have conceded that the provision is arbitrary. Res. Br. at 21 n.3. Petitioners, however, have argued in their petition for certiorari and in their brief that the provision is reasonable because it is the product of good-faith collective bargaining. Petition for Certiorari at 9-10; Pet. Br. at 18-20. Indeed, even if the provision had been adopted by the Trustees, it would be reasonable for the reasons set forth in the dissenting opinion below. *Robinson v. UMWA Health and Retirement Funds*, *supra*, 640 F.2d at 426 (Robb, J., dissenting) (P.A. 19a-20a).

class from life-time health benefits is a "structural violation" of the "sole and exclusive benefit" provision of Section 302(c)(5) of the Labor-Management Relations Act, 1947 ("Taft-Hartley Act"), 29 U.S.C. § 186(c)(5). Res. Br. at 13-21. However, although some courts have adopted a broad construction of the "structural violation" doctrine, other courts have taken the view that judicial review of Taft-Hartley trusts should be limited to ascertaining whether the trust conforms to the express requirements of Section 302(c)(5).[3] *Compare, e.g., Knauss v. Gorman*, 583 F.2d 82 (3d Cir. 1978) *with Bowers v. Ulpiano Casal, Inc.*, 393 F.2d 421 (1st Cir. 1968). And the courts that have adopted a broad construction of the "structural violation" doctrine have misunderstood the scope of review conferred by Section 302(c)(5) of the Taft-Hartley Act. *See, e.g., Alvares v. Erickson*, 514 F.2d 156, 164-67 (9th Cir.), *cert. denied*, 423 U.S. 874 (1975).

The misunderstanding can be traced to the fact that virtually every one of the courts began its analysis of Section 302(c)(5) with the early decisions of the District of Columbia Circuit, involving challenges to eligibility rules devised by Taft-Hartley trustees. Pet. Br. at 24. And, as petitioners have shown, the District of Columbia Circuit

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[3] Section 302(c)(5) provides, as an exception to the general prohibition against payment by an employer to a labor organization, that payments may be made to a trust fund established for the sole and exclusive benefit of employees and their dependents, provided that (1) such payments are held in trust for the purpose of paying pension, medical, and similar benefits; (2) the basis on which payments are to be made is specified in a detailed written agreement; (3) employees and employers are equally represented in the administration of the trust fund; (4) the fund is subject to an annual, publicly-available audit; and, (5) payments made for the purpose of paying pensions are held in a separate trust and are unavailable for any other purpose. 29 U.S.C. § 186(c)(5).

based its authority to review eligibility rules devised by Taft-Hartley trustees, not on Section 302(c)(5), but on the broad equitable principle that the discretionary acts of fiduciaries are subject to review by courts of equity.[4] Pet. Br. at 20-22. This is illustrated by the decision in *Kosty v. Lewis*, 319 F.2d 744 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 964 (1964), where the court stated:

> The institutional arrangements creating this [employee benefit trust] Fund . . . are cast expressly in fiduciary form; and the Trustees, like all fiduciaries, are subject to judicial correction in a proper case upon a showing that they have acted arbitrarily or capriciously towards one of the persons to whom their trust obligations run. [*Id.* at 747.]

Accord, Norton v. I.A.M. Nat. Pension Fund, 553 F.2d 1352 (D.C. Cir. 1977); *Pete v. UMWA Welfare and Retirement Fund of 1950*, 517 F.2d 1275 (D.C. Cir. 1975) *(en banc)*; *Gaydosh v. Lewis*, 410 F.2d 262 (D.C. Cir. 1969); *Roark v. Lewis*, 401 F.2d 425 (D.C. Cir. 1968).

The courts that adopted a broad construction of the "structural violation" doctrine were initially concerned with whether there was federal jurisdiction over benefit entitlement controversies under Section 302(e) of the Taft-Hartley Act, which conferred jurisdiction upon the district courts ". . . to restrain violations of this section. . . ." 29 U.S.C. § 186(e). *E.g., Lugo v. Employees Retirement Fund of the Illumination Products Industry*, 529 F.2d 251 (2d Cir.), *cert. denied*, 429 U.S. 826 (1976). The courts that concluded that Section 302(e) conferred jurisdiction over such controversies then ignored the fact

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[4] Early cases recognizing that the trustees of non-Taft-Hartley pension funds are subject to review by equity courts are collected in Annot., 42 A.L.R. 2d 461, 472-75 (1955).

that review was available only "to restrain violations" of Section 302(c)(5), and adopted the equitable standard of review for trustee action developed by the District of Columbia Circuit. *E.g., Lee v. Nesbitt*, 453 F.2d 1309 (9th Cir. 1972). Significantly, however, jurisdiction in the District of Columbia cases rested on either diversity of citizenship, *e.g., Danti v. Lewis*, 312 F.2d 345 (D.C. Cir. 1962), *Lewis v. Hogwood*, 300 F.2d 697 (D.C. Cir. 1962), or the jurisdiction thought to be conferred by the Declaratory Judgment Act, 28 U.S.C. § 2201 (1976), *e.g., Assalone v. Carey*, 473 F.2d 199 (D.C. Cir. 1972), *Ruth v. Lewis*, 166 F.Supp. 346 (D.D.C. 1958). It is clear, therefore, that jurisdiction over the discretionary acts of trustees is independent of Section 302 of the Taft-Hartley Act. It is also clear that review of the discretionary acts of trustees is authorized, not by Section 302(c)(5), but by broad principles of equity. *See Rueda v. Seafarers International Union*, 576 F.2d 939, 942 (1st Cir. 1978); *Cuff v. Gleason*, 515 F.2d 127, 129 (2d Cir. 1975).

In reliance upon the equitable authority to review the discretionary acts of trustees, respondents argue that eligibility rules negotiated by collective bargaining representatives are also subject to judicial review upon a showing that the rules are unreasonable. In making that argument, respondents ignore the fact that ". . . the duty of the . . . trustee of an employee benefit fund under § 302(c)(5) is directly antithetical to that of an agent . . ." appointed for purposes of collective bargaining. *N.L.R.B. v. Amax Coal Co.*,___ U.S.___, 101 S.Ct. 2789, 2795 (1981).

Union and employer collective bargaining representatives have a mutual obligation under Section 8 of the NLRA "to meet to negotiate an agreement." 29 U.S.C. § 158(a)(5), (b)(3), (d). In so doing, the union and employer

representatives "must, in conformity with the most basic principles of agency law, follow the instructions and act in the sole interest of" their appointing parties. *Sheet Metal Workers International Association*, 234 N.L.R.B. 1238, 1247 (1978), *petition for review pending sub nom. Central Florida Contractors Association v. N.L.R.B.*, No. 79-2396 (5th Cir. 1979). Therefore, they may refuse to agree to proposals or to make concessions contrary to those interests. 29 U.S.C. § 158(d). In the event, however, that an agreement is reached, the collective bargaining representatives are required by Section 8 "to execute a written contract incorporating [the] . . . agreement." 29 U.S.C. § 158(d).

Trustees, on the other hand, have no authority or responsibility to negotiate under Section 8 of the NLRA, and they are prohibited by Section 406 of the Employee Retirement Income Security Act of 1974 ("ERISA") from acting in the interests of the employer or the union. 29 U.S.C. § 1106; *N.L.R.B. v. Amax Coal Co.*, *supra*, 101 S.Ct. at 2795-96, 2798-99. Consequently, trustees may not negotiate modifications of the written agreement of the collective bargaining parties in order to give effect to benefit proposals advanced by one party, but rejected by the other, during negotiations. To the contrary, trustees are required by Section 302(c)(5) of the Taft-Hartley Act, and by Section 404 of ERISA, to administer the written agreement in accordance with its terms and for the exclusive purpose of providing benefits to the beneficiaries defined therein. 29 U.S.C. §§ 186(c)(5), 1104(a)(1)(A), (D).

The differences between trustees and collective bargaining representatives were recognized by this Court in its recent opinion in *Amax Coal Co.*, where it is stated that

> . . . the collective-bargaining representatives of an employer and a union attempt to reach an agreement by negotiation, and, failing agreement, are free to settle their differences by resort to such economic weapons as strikes and lockouts, without any compulsion to reach agreement. *Carbon Fuel Co. v. UMWA*, 444 U.S. 212; *N.L.R.B. v. Insurance Agents International Union*, 361 U.S. 477, 495.
>
> The atmosphere in which employee benefit trust fund fiduciaries must operate . . . is wholly inconsistent with this process of compromise and economic pressure. The management-appointed and union-appointed trustees do not bargain with each other to set the terms of the employer-employee contract. . . . Rather, the trustees operate under a detailed written agreement, 29 U.S.C. § 186(c)(5)(B), which is itself the product of bargaining between the representatives of the employees and those of the employer. Indeed, the trustees have an obligation to *enforce* the terms of the collective-bargaining agreement . . . . [*N.L.R.B. v. Amax Coal Co., supra*, 101 S.Ct. at 2797-98; emphasis in original; footnote omitted.]

In light of these differences between trustees and collective bargaining representatives, this Court should not subject collective bargaining representatives to the standard of conduct appropriate for trustees. Rather, the responsibilities of collective bargaining representatives are governed by Section 8 of the NLRA. And, for that reason, to review the discharge of bargaining responsibilities pursuant to Section 302(c)(5) would be contrary to the teaching of this Court in *Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). In *Pittsburgh Plate Glass*, this Court stated that

> . . . the union's role in the administration of the [302(c)(5)] fund is of a far different order from its duties as collec-

> tive-bargaining agent. To accept the Board's reasoning that the union's § 302(c)(5) responsibilities [in the administration of the fund] dictate the scope of the § 8(a)(5) collective-bargaining obligation would be to allow the tail to wag the dog. [*Id.* at 170-71.]

Accordingly, the denial of life-time health coverage for the widows in respondents' class, set forth in a collective bargaining agreement negotiated pursuant to the requirements of Section 8 of the NLRA, is not subject to judicial review under Section 302(c)(5) of the Taft-Hartley Act. To decide otherwise would be contrary to the rationale recently adopted by this Court in *Amax Coal Co.*

CONCLUSION

Upon the foregoing, it is respectfully submitted that the judgment of the court below is erroneous as a matter of law and should, therefore, be reversed, and the case remanded with instructions to enter judgment in favor of the Trustees of the 1950 Benefit Trust.

Respectfully submitted,

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